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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1953.

No. —.

ROSE PUBLICKER,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

To the Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Rose Publicker, respectfully prays for a writ of certiorari to the United States Court of Appeals for the Third Circuit, to review that Court's Judgment (R. 104) dated July 16, 1953 in petitioner's Appeal No. 10,951 in that Court affirming the decision by the Tax Court of the United States.

A certified transcript of the record of the case, including the proceedings in the United States Court of Appeals for the Third Circuit, is furnished herewith in accordance with the Rules of this Court.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This case involved gift tax deficiencies for 1946 and 1947 in the respective amounts of $2,733.75 and $41,272.50. The only question at issue in the proceedings below was what were the respective fair market values as of the respective dates of gift of diamond jewelry given by petitioner to her daughter in the years 1946 and 1947.

In finding deficiencies in gift tax liability for 1946 and 1947 the Tax Court, affirmed by the Court of Appeals, added to the asserted respective fair market values amounts representing Federal excise taxes paid by the donor upon the respective prices of the jewelry at the respective times of purchase by donor.

The 1946 gift, a marquise diamond weighing 20.5 carats mounted in iridium platinum setting with two tapered bullet shaped diamonds, had been bought by petitioner on April 19, 1941 for $45,000. The 10% Federal excise tax on the purchase in 1941 was $4,500. In petitioner's gift tax return for 1946 its value on the date of gift was reported as $50,000. The Tax Court, affirmed by the Court of Appeals, determined the value of the 1946 gift to be $58,500 based upon its cost of $45,000 plus 20% claimed appreciation in value of diamonds between 1941 and 1946 (i.e., $9,000) plus the $4,500 excise tax paid in 1941.

Petitioner made a second gift to her daughter on July 16, 1947 of an emerald-cut diamond weighing 33.45 carats set in ring, and a pair of marquise diamond ear clips, which had been purchased by petitioner on February 5, 1947 for $200,000; the 20% Federal excise tax on this purchase was $40,000. Petitioner reported the combined value on the date of gift as $121,000. The Tax Court, affirmed by the Court of Appeals, determined the value of the gift to be not less than $240,000.

The testimony of three admittedly qualified and long-established diamond merchants, who appeared for the peti-

tioner, variously estimating the value of the 1946 gift at from $46,125 to $51,250 and appraising the 1947 gift at from $78,590 to $122,000, was rejected. Respondent's only witness, an appraiser of jewelry, principally in estate valuation work, testified that the fair market value of the 1946 gift was $90,000 not including Federal excise tax and he appraised the 33.45 carat diamond at $200,000 not including excise tax. Respondent offered no evidence of the value of the ear clips, part of the 1947 gift. Respondent's witness conceded that no retail market exists for diamonds of the size and character here involved.

On appeal from the Decision of the Tax Court of the United States, Circuit Judge Herbert F. Goodrich dissented from the affirmance by the Court of Appeals for the Third Circuit in a very important part of the case, to which the first of the **Questions Presented** is directed—and on that aspect of the case the decisions of the Tax Court and the Court of Appeals were grounded largely on a prior decision of the Tax Court, a case of first impression, to which decision six Judges of the Tax Court dissented.

JURISDICTIONAL STATEMENT.

This Court has jurisdiction to review the final judgment here involved, under Section 1254(1) of the Judicial Code as amended, title 28 U. S. C. § 1254(1), Act of June 25, 1948, c. 646, 62 Stat. 928.

The Judgment (R. 104), for the review of which a writ of certiorari is here sought, is dated July 16, 1953. Petitioner filed a timely petition for rehearing (R. 105) which was denied on August 19, 1953.

STATUTE INVOLVED.

The proceeding involves Section 1005 relating to Gift Taxes of the Internal Revenue Code, title 26 U. S. C. § 1005, and Treasury Regulations 108, sec. 86-19 issued thereunder.

present case (R. 84) and the Court of Appeals apparently agreed in this view (R. 100).

We believe that the *Gould* case should not control the instant case because of their clearly distinguishable facts, but if the *Gould* case is deemed controlling we ask this Court to examine that case in which the majority holding was strongly dissented from by Judges Disney, Harron and Johnson who wrote separate dissenting opinions, and Judges Arundell, Van Fossan and Arnold who concurred in one or more of the dissents. No appeal was taken from the decision in the *Gould* case, but its holding was apparently approved by the Court of Appeals for the Second Circuit in *Anthony D. Duke v. Commissioner of Internal Revenue,* 200 F. 2d 82 (1952), in a brief opinion by Judge Frank which did not state the Court's reasoning.

The opinions of the six dissenting Judges of the Tax Court in the *Gould* case offer compelling reasons why the *Gould* case, the *Duke* case and *a fortiori* the present case, are not correctly decided by the respective Courts of Appeal.

As Judge Johnson of the Tax Court said:

> "Here the *price* of the ring was $58,000. Indeed, if that was not the price, one may well ask, On what was the tax of $5,800 computed? *That price is the best indication we have of the fair market value of the ring. Had the ring been received by the decedent by inheritance, and he had then given it to his wife, and the same ring was, at the time of gift, being listed by retailers at a price of $58,000 plus excise tax, without doubt a jeweler would have appraised the ring received by inheritance at a fair market value of $58,000.* We are only fixing the value of the ring itself, which is all that the wife received, not the amount the decedent was out of pocket in obtaining the ring." (Second italics supplied.)

Judge Johnson further pointed out that the decision required the payment of a Federal gift tax upon the amount

representing the excise tax, a repellent idea not required by the statute. 14 T. C. at p. 419.

Judge Harron (14 T. C. at p. 419) pointed out that petitioner paid the excise tax as a tax on the article which the retail seller merely collected for the government, the tax neither in fact nor in the view of the Statute having added to the value of the article.

Judge Disney agreed that the addition was a tax and not an appreciation in value and pointed out that the effect of the majority view was that the government taxed upon a tax which it had just required the purchaser to pay in addition to the value at the time of purchase (14 T. C. at p. 418).

In the present case, Judge Goodrich dissented forcefully from the majority opinion of the Court of Appeals, saying (R. 103):

> "If Mrs. Publicker gave these diamonds to her daughter and her daughter gave them to a friend and that friend gave them to another friend there would not, I take it, be additional sums added to value as a result of each transfer. But if the diamonds went through this same number of sales transactions somehow or other the value is supposed to be increased by the amount of tax involved in each instance. That seems to me to be incongruous. Some incongruities are unavoidable in tax law but this is one which seems to me as avoidable as it is obvious."

The question which has occasioned such divergent views among the Judges of the Tax Court and among the Judges of the Court of Appeals for the Third Circuit is an important federal question, having a considerable effect upon the administration of the Gift Tax law. The vigorous dissents in the courts which have considered the question up to now presage an inevitable conflict in decisions if the question is litigated in other Circuits. It is therefore a question which we believe should be settled by the Supreme Court of the United States.

Argument—Point 2.

(First Question Presented—Reason 4.)

The only statutory guide furnished by Section 1005 of the Internal Revenue code for determining the assessed value of a gift is "the value at the time of the gift" (26 U. S. C. § 1005).

Section 86-19(a) of Regulations 108 provides:

> ". . . The value of the property is the price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell . . . Such value is to be determined by ascertaining as a basis the fair market value at the time of the gift of each unit of the property . . . All relevant facts and elements of value as of the time of the gift should be considered".

The effect of the decision of the Tax Court as affirmed by the Court of Appeals would substitute for the rule of the Regulations as a measure of value, as respects the 1946 gift, the cost to the donor increased by an amount purportedly representing the increase in value of jewelry between the date of the purchase (1941) and the date of the gift (1946) to which is added the excise tax actually paid by the donor (in 1941) on the lesser of these amounts. This is an incongruous result, inasmuch as it was necessary for the courts below to find that at the time of the gift in 1946 the fair market value of the 1946 gift was 20% greater than it had been in 1941 when purchased and then to add, not the excise tax which would have applied on a retail sale in 1946 of 20%, but the excise tax actually paid in 1941 which was in the amount of 10% and which had been applied to only a portion of the fair market value as found in 1946.

It is clear that the inclusion of an excise tax in the market value of a gift results in an unavoidable anomaly. If the excise tax should be included as a part of value at the time of the gift it should, for a 1946 gift, be calculated at

20%, as manifestly the 10% rate did not apply at the time of the gift. On the other hand, assuming that the tax actually paid at the time of purchase of the gift, was a part of cost, what basis in logic is there for disregarding this tax as part of the cost in determining the alleged extent to which diamond prices had become inflated by 1946? It is true that the Courts below avoided the dilemma of assessing a fictitious amount of tax (inasmuch as 20% tax was not paid) but in so doing they applied inconsistent standards in determining value. If the cost at the time of the purchase represented value at that time, any increase in value should be applied to the total cost. The decision seems to have been based upon a view in the Courts below that the original tax, while a part of cost, was not a part of value for the purpose of determining present value, but must nevertheless be considered a part of value to the extent it was actually paid.

This, it is submitted, renders Regulations 108 Section 86-19(a) meaningless inasmuch as value is by definition there declared to be the price at which the property would change hands on the date of gift. If the excise tax paid by the donor became a part of cost, this cost, which the Court of Appeals has stated becomes the price, will be the only logical base to which to apply any inflationary increase in value for the purpose of determining the price as of the date of gift. The result reached by the opinion of the Court of Appeals has no warrant in the Regulations. In fact, a companion section of the Regulations expressly applies to the valuation of gifts of stock the rule urged by petitioner and authorizes the use of stock market quotations without adding the taxes incurred in the sale of the shares. Nothing in the Regulations prevents Section 86-19(a) from being given the same effect which the Commissioner has more explicitly applied to stocks in Section 86-19(c). The Court of Appeals suggested that the question should be referred back to Congress (R. 102), but it is submitted that no Congressional action will be needed unless this Court permits

to stand the decision of the Court of Appeals which strains out of Section 2409 a "Congressional intent" having no clear basis in either Act or Regulations. This point is the subject of the next section of this Argument.

Argument—Point 3.

(First Question Presented—Reason 5.)

It is clear from the opinion of the Court of Appeals in this case that the Court regarded as decisive Section 2409 of the Internal Revenue Code, which was not argued before either that Court or the Tax Court. We believe this section can be demonstrated to be irrelevant and we submit that it has been erroneously interpreted by the Court of Appeals.

The ultimate question in the case is the determination for the purposes of the gift tax of the value of the gifts. As has been cited, the gift tax on jewelry is assessed against "the value thereof at the date of the gift", which the Regulations provide is the price at which such property would change hands between a willing buyer and a willing seller. The crucial question therefore is what is the price at which the gift would have changed hands on the date of the gift. The Excise Tax Act imposes on jewelry sold at retail a tax equivalent to 20% (prior to 1944, 10%) of the *price* for which sold.[2] Despite this plain statutory recognition of the fact that the tax is additional to price and added to price, the Court of Appeals pointed to a section of the Act which has no other purpose than to require the tax to be passed on to the purchaser (by preventing the seller from representing that it is not passed on) and the Court invoked this clause as demonstrating that the Excise Tax law requires that the value of the property plus the excise tax constitute price.

Section 2409 of Title 26 U. S. C. provides:

"*Penalty for representation that tax is not passed on.* Whoever in connection with the sale or lease, or

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2. Internal Revenue Code, Ch. 19, Section 2400, 26 U. S. C. § 2400.

offer for sale or lease, of any article, taxable under this chapter, makes any statement, written or oral, in advertisement or otherwise, intended or calculated to lead any person to believe that the price of the article does not include the tax imposed by this chapter, shall on conviction thereof be punished by a fine of not more than $1,000."

It seems clearly evident that the Congress did not intend, in using the word *price* in a general sense in Section 2409, to establish a concept which should override the plain words of Section 2400. Indeed, unless price is determined before the tax, there is nothing upon which the tax can be calculated. Section 2403 provides that, in determining *for the purposes of the Act* the price for which an article is sold, the amount of tax imposed whether or not stated as a separate charge shall be excluded.

The view of the Court of Appeals is plainly at odds with this Section. Its opinion states (R. 100);

> "The words quoted apparently mean *that for purposes of the excise tax* Congress wished the advertised or stated price of the articles covered by the tax to include the amount of the tax. In short, there is to be one price for the article which is to include the tax and, in effect, the tax is not to show insofar as members of the purchasing public are concerned." (Italics supplied.)

It is submitted, however, that by reason of Section 2403 the contrary is plainly true. Congress obviously contemplated the establishment of a price by a retailer to which the excise tax would be added as a percentage thereof and Congress expressly sanctions the usual and customary business practice of separately stating the tax, and in fact requires it in the retailer's return. The only possible reason for Section 2409 and the extent of the Congressional intent as evidenced in its title, was to prevent misrepresentation by sellers that the tax was not being passed on, *i.e.*, the misrepresentation that the tax would be paid out

of the seller's profit. If the seller were permitted to absorb the excise tax a case might be made for the Court's conclusion that the tax somehow adds to the value of the article. Under Section 2409, however, the seller must apprise a purchaser of the fact that the seller has not paid and cannot pay the tax, which to the contrary is required to be passed on to the buyer in addition to the price paid the dealer. To construe this section as intended to determine what is value for gift tax purposes is so evidently to extend the plain meaning of the Act as to be in effect to write a new section. The stated Congressional purpose is to prevent the seller from representing that he is absorbing the tax. The conclusion read into it by the Court of Appeals, that "Congress had in mind the consistent statutory pattern whereby the amount of the excise tax should be included in ascertaining the value of an article . . ." (R. 103) is not even remotely indicated by the Section.

The Court of Appeals pointed out (R. 101):

> "It is indeed an odd conception to say that an excise tax is part of the value of an article whether the tax be paid or unpaid."

It seems an even less justifiable conception to say that an excise tax must be *included* as part of the price of an article for the purpose of an Act which expressly states that for the purposes of the Act the price shall *exclude* the tax, especially when the tax cannot be calculated in the first place until the price has been determined.[3]

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3. In a special ruling published by telegram on December 20, 1949 (505 CCH, Sec. 6062) the Commissioner advised that the Excise Tax Law upon furs did not prohibit a retailer from advertising fur coats at stipulated prices subject to 20% Federal excise tax, the price tag including the promise to give credit if the tax were reduced or repealed within a specified period of time. The promise was regarded merely as a *price* adjustment resulting in redetermination of tax liability on the basis of a revised sale price. This ruling is plainly contrary to the present decision.

Argument—Point 4.

(First Question Presented—Reason 6.)

The Court of Appeals based its determination upon the premise that inasmuch as the property must be valued as a sale the amount of the excise tax must be included because "both the buyer and the seller would have in mind and necessarily would calculate the amount of the excise tax as part of the cost of the property" (R. 102).

This is merely another way of stating that the excise tax becomes part of the price. This statement is, we submit, entirely fallacious.

In assessing the retailer's excise tax Congress specifically declared that neither the tax itself nor any separately stated retail sales tax should be included in the price for which an article of jewelry is sold (26 U. S. C. § 2403).

Price is defined in Webster's New International Dictionary, Second Edition, G. & C. Merriam Company, as follows:

> "In the broadest sense, the quantity of one thing that is exchanged or tendered in barter or sale for another; the exchange value of one thing expressed in terms of units of another; in the narrower and more common sense, the amount of money given or set as the amount that will be given or received in exchange for anything; specifically, the amount at which actual current transactions take place in the market."

It is the plain intent of Section 2400 to use the word "price" in its second and ordinary meaning. Regulation 51 defines the retailer's price for purposes of the excise tax as the retailer's actual price at the point of sale (Section 325), which is to say that the usual meaning of the word applies. There is nothing in Section 86-19(a) of Regulations 108 to suggest that the word "price" is to be used in any other than its usual sense for gift tax purposes.

Nothing in the Gift Tax Act or in Regulations 108 requires or even suggests that fair market value for gift tax purposes means a "retail" price. Moreover, nothing in the Act justifies the conclusion that even where a retail price is found to constitute fair market value, this price is to be increased as if it constituted a retail *sale*. The excise tax is not a tax on articles of jewelry; it only attaches when title passes from a retailer to a purchaser (Regulations 51, Section 320.4). Whether it be deemed a tax upon the article or only upon the sale, it clearly does not add to the value of the article. The tax is not a part of an exchange other than from a retailer to a purchaser. It has no application to a private sale. Even in a sale at retail, the price demanded by the seller and paid by the buyer in exchange for the article does not include the tax. Obviously, the retailer obtains no benefit from the tax which he does not retain but merely collects for the Government. It does not in any sense represent a part of the amount demanded by the seller as the consideration. It plays no part in the amount at which actual current transactions, in the definition, take place in the market, inasmuch as the tax cannot be determined until the price is fixed and the amount of the tax is arbitrarily fixed by the Government and not by the merchant.

The illustration referred to by Judge Murdock writing for the majority of the Tax Court in the *Gould* case, cited in the opinion of the Court of Appeals (R. 101), of taxes upon cigarettes is unfortunate and misleading. The Federal Tobacco Tax is imposed upon the manufacture or import of tobacco (26 U. S. C. § 2000 et seq.) and the tax rate is a specified amount per thousand of cigars or cigarettes and per lb. as respects smoking tobacco, and consequently does not depend for its determination upon the prior determination of price. State taxes on tobacco, especially on cigarettes, are also customarily levied in fixed amounts per package. Such taxes, especially where so large a part of the ultimate price fixed for the article,

may in the lay mind become inextricably a part of the price, but it is to be noted that even the retailer does not collect the cigarette tax for the Government, but merely recoups the cost to him of tax stamps already affixed to the package sold by him.

The opinion of the Court of Appeals apparently fails to consider that the excise tax on jewelry forms no part of a private sale not by a retailer so that if petitioner had sold the diamonds rather than made gifts of them, there would have been no excise tax paid, yet the value of the diamonds could in no sense be said to have changed merely because they were sold instead of given to an individual.[4]

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4. If petitioner, instead of giving the 1947 gift to her daughter, had on the date of the gift sold it to a stranger for exactly the same price that she had paid for it five months previously, viz. $200,000, the transaction would, of course, have involved no excise tax inasmuch as the tax applies only to a retailer. If her purchaser immediately made a gift of the stone and declared its value for gift tax purposes as $200,000, it is indisputable its declared value would have been immune to attack. Neither the Government nor the Government's witness contended that the fair market value of the 1947 gift in this case was in excess of $200,000, *before tax*. It would be preposterous if identical stones both bought at retail for $200,000, plus $40,000 excise tax, would in a transfer on the same day have a fair market value of $200,000 if sold to an individual, but $240,000 if disposed of by gift. It could not be reasonably contended in the supposed case that petitioner would have obtained less than fair market value in the private sale merely because she had not recouped the tax paid by her to the retailer. She is not required to pass it on nor is she required to collect the tax for the Government on private sale. She has received the full fair market value, even according to the view of the Government's expert witness, upon receiving the price the dealer charged her, viz. $200,000.

Judge Goodrich pointed out in his dissenting opinion (R. 103) that a series of gifts would not result in added value and considered it an obvious and avoidable incongruity to hold that upon a number of sales the value would

Moreover, the excise tax by definition is not a part of the price demanded by the seller and paid by the buyer, even in a retail sale. To the contrary, the seller must determine his price and then apply the percentage in order to determine the excise tax which he merely collects for the Government.

And in considering what is meant by a "willing seller" in the definition in Regulations 108 Section 86.19, we must recognize that the seller in a retail sale of jewelry has become induced or willing to part with his property, knowing full well that he will receive therefor only the price charged, and not the price plus the excise tax imposed upon the transaction. It is the price alone therefore that causes the seller to part with his property.

In disregarding this self-evident proposition and in adopting the contrary as its premise, we submit that the Court of Appeals has reached a conclusion which is clearly erroneous.

Argument—Point 5.

(Second Question Presented—Reason 7)

In accepting as conclusive evidence of value of the 1947 gifts an isolated sale of a diamond of the size and character here involved, and rejecting the evidence of admittedly qualified experts as to actual fair market value, the Court below and the Tax Court accepted a standard which does not conform to the requirement of the Regulations for determining value for gift tax purposes.

The record shows clearly the difficulty encountered by even the most experienced diamond merchants in finding buyers for diamonds of the size of twenty carats and over. It must be accepted as a fact that diamonds of this size

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be somehow increased by the amount of tax involved. The foregoing situation presents at least an equally incongruous result which seems clearly to be required by the opinion of the Court of Appeals.

are very rarely sold. Moreover, it is equally patent that the actual sale price in such an isolated transaction is usually affected by peculiar attendant circumstances so as to be far from determinative of fair market value.

A diamond of extraordinary size and of rare and unusual character cannot be classified as readily saleable merchandise, for there are very few potential buyers. Where such a diamond is being offered to a purchaser and there is no other article available like the one offered (R. 59) there are usually special circumstances influencing the price such a buyer might be willing to pay. Obviously, the buyer may not have the alternative of going to another seller to buy a comparable diamond. The fact is that when a buyer is sufficiently interested and can afford to buy one of the world's rarities, the price he will pay is very likely to be the maximum he is able to pay, having nothing to do with fair market value. There can be no doubt that this is the practice in the diamond business as in other comparable situations, such as the sale of art objects, rare paintings, rare manuscripts, etc. The Government's witness, Lauterbach, *said that any price could be put on a diamond of the type involved in the 1946 gift* (R. 67).

Respondent contended, and the Courts below accepted the argument, that the sale price of the 1947 gifts was determinative of their value. However, if any one fact stands out clearly in this case, it is that the price paid by the petitioner for the 33.45 carat diamond was not the fair market price or value and that petitioner had been persuaded to pay far in excess of the fair market value.

The Regulations require for the determination of value under the Statute something more than mere evidence of a sale. A sale establishes a price paid in the market, but the Courts have always recognized that sales in restricted markets or under unusual circumstances signify neither value nor market value. It is especially true that in the case of unique jewelry, art masterpieces and rare manuscripts the evidence of a single sale does not establish a "fair market price".

The standard of fair market value is a judicially determined measure which takes account of the foregoing considerations. Both the rule and the reason were clearly stated in *Heiner v. Crosby*, 24 F. 2d 191, CCA 3d (1926). In that case which considered shares of stock but applied principles of law equally applicable to the present case, the Court of Appeals for the Third Circuit said:

> "The fair market price or value of stock at a particular time is a question of fact, to be determined from all the circumstances. Market price implies the existence of a market, of supply and demand, of sellers and buyers. Sales are always evidence of a market price, but the statute requires that, in 'ascertaining the gain derived from the sale' there must be not simply a 'market price' but a 'fair market price'. *Sales made at a particular time and place may be significant, but the price paid is not necessarily decisive of fair market price or value. The fact of sale, in itself and without regard to the circumstances under which the sales were made, does not conclusively establish either statutory fair market price or value.* Sales made under peculiar and unusual circumstances, such as sales of small lots, forced sales, and sales in a restricted market, may neither signify a fair market price or value nor serve as the basis on which to determine the amount of gain derived from the sale. In such cases resort must be had to evidence to determine 'fair value'. Offers made in good faith and opinions of intelligent men experienced in the business are admissible to show fair value." (Cases cited.) (Italics supplied.)

Petitioner's witnesses, conceded by the Courts below to have been fully qualified experts experienced in the diamond business, placed value upon the diamonds which represented the retail price to anyone, including to an individual for personal use. Their testimony made it plain that an individual buyer for large diamonds is a rarity

and that only a dealer can expect to develop a market for such a gem. Even then buyers are not easily or frequently found. Both of petitioner's purchases had been made from dealers, but an isolated sale does not constitute evidence of a market.

It is submitted that the Court of Appeals erred in failing to apply its former decision in *Heiner v. Crosby* to the present case.

Moreover, that Court departed from the evidence and entered the field of sheer speculation when it stated "the possibility of a more favorable private sale cannot be entirely eliminated", (R. 96) and that "cost and market value realizable on sale of the diamonds to an individual for his personal use might well have been substantially the same" (R. 97). The evidence was entirely to the contrary.

CONCLUSION.

It is respectfully submitted that because of the importance of the question of whether the Federal excise tax should be added to price to determine value for gift tax purposes, certiorari should be granted in this case and that the strong dissents by six members of the Tax Court of the United States to the initial statement of the challenged ruling, as well as the vigorously expressed disapproval by Judge Goodrich in dissenting to the decision of the Court of Appeals in this case, emphasize the serious doubt still existing as to the correctness of the decision and present an important question of federal law which should be settled by the Supreme Court of the United States.

Respectfully submitted,

EARL JAY GRATZ,
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